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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANCELMO SIMEON MENDEZ LOPEZ,
SANTOS NATIVIDAD CALI ZAMBRANO,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

-against-

SETAUKET CAR WASH & DETAIL CENTER,
TLCW, INC., KARP ENTERPRISES, INC.,
STEVEN SAVIANO, and MARK CHAIT,

Defendants.

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APPEARANCES:

FRANK & ASSOCIATES, P.C.
BY: Peter A. Romero, Esq.
500 Bi-Country Boulevard, 112N
Farmingdale, New York 11735
Attorneys for Plaintiffs

ZABELL & ASSOCIATES, P.C.
BY: Saul D. Zabell, Esq.
1 Corporate Drive
Bohemia, New York 11716
Attorneys for Defendants

WEXLER, District Judge:

Presently before the Court is defendants' objections to an order of Magistrate Judge Arlene Rosario Lindsay of October 7, 2014 (the "Order") granting plaintiff's motion that defendant Steven Saviano be produced for a deposition on a mutually convenient date. The Order further directed the parties to meet and confer, and submit a proposed schedule to complete any outstanding discovery concerning plaintiffs who opted in to the action between September 20

and October 3. See Order, at 2.¹

A motion for leave to take a deposition and resolve other discovery issues are non-dispositive pre-trial motions upon which a Magistrate Judge has authority to rule. Koumoulis v. Independent Financial Marketing Group, Inc., 2014 WL 223173, *1 (E.D.N.Y. 2014) (a magistrate judge has great discretion to resolve discovery disputes and should be reversed only when that discretion is abused) (citations omitted). Under Rule 72(a) of the Federal Rules of Civil Procedure (“F.R.Civ.P.”), a district court judge may modify or set aside an order of a magistrate judge if that order is “clearly erroneous or contrary to law.” See also 28 U.S.C. § 636 (b)(1)(A) (a court may reconsider any pretrial matter decided by the magistrate judge when that order is “clearly erroneous or contrary to law.”)

Defendants’ object to the Order, arguing that there is no basis upon which to extend discovery to include the Saviano deposition, which plaintiffs noticed for November 2014, after the discovery deadline of September 30, 2014.² Defendants argue that since Magistrate Lindsay ruled in July 2014 that no further extensions of discovery would be granted, plaintiffs’ request should be denied. Similarly, defendants argue that plaintiffs’ request for discovery on the additional opt-in plaintiffs, beyond the September 30, 2014 discovery deadline, is also not warranted.

Plaintiffs assert that their request to the Court directing the deposition of Saviano was filed before the September 30, 2014 deadline, and that because of Defendants’ delay in providing

¹The Order also granted plaintiffs’ request to publish its Notice of Pendency and Consent to Join in a Spanish publication, to which the Defendants have not objected.

²Defendants note that Saviano’s deposition was originally noticed earlier in the litigation for July 10, 2013, but was never held.

information for the notice of pendency, the opt-in period did not expire until October 3, 2014.

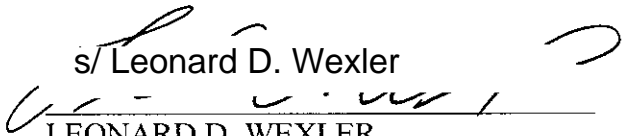
Therefore, their request for discovery was “both necessary and appropriate.”

Having reviewed the decision of the Magistrate Judge and the submissions of the parties, the Court finds that the decision of the Magistrate Judge permitting a deposition of Steven Saviano, and directing the parties to meet and confer and submit a schedule regarding outstanding discovery concerning the plaintiffs who opted in from September 30 through October 3, was neither clearly erroneous nor contrary to law, and should not be disturbed.

CONCLUSION

Defendants’ objections to the Order of Magistrate Judge Lindsay of October 7, 2014 are hereby overruled. Therefore, the Order of Magistrate Judge Lindsay appearing at docket entry number 69 is affirmed. Accordingly, the case is returned to Magistrate Judge Lindsay for discovery to be completed as directed here.

SO ORDERED


s/ Leonard D. Wexler
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
December 9, 2014